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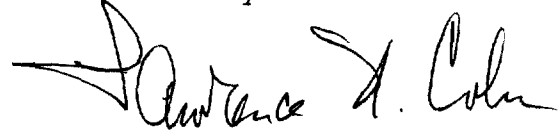
February 7, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Dear Mr. Caton

On behalf of Reading Eagle Company, there are herewith submitted an original and four (4) copies of its Comments in MM Docket No. 96-197 (In the Matter of Newspaper/Radio Cross-Ownership Waiver Policy.)

Sincerely

  
Lawrence N. Cohn

Enclosures (5)

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BEFORE THE  
**Federal Communications Commission**

In the Matter of )  
 )  
Newspaper/Radio Cross-Ownership ) MM Docket No. 96-197  
Waiver Policy )  
 )

To: The Commission

**COMMENTS OF READING EAGLE COMPANY**

Lawrence N. Cohn

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February 7, 1997

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### Summary

Reading Eagle Company ("Reading") publishes daily newspapers in Reading, Pennsylvania, and is also the majority stockholder of WEEU Broadcasting Company, licensee of Station WEEU, Reading, Pennsylvania (a "grandfathered" combination.) Reading supports the general thrust of the Commission's Notice of Inquiry ("NOI") that the plethora of new communications media have made the prohibition on new newspaper/radio station combinations in the same market (see Section 73.3555(d)) outmoded and contrary to the public interest. Reading agrees with the Commission that this restriction should be replaced with regulations which are appropriate to the current communications marketplace.

Reading does not, however, agree with the suggestion in the NOI that the Commission intends to relax the current rule by allowing "waivers" of the newspaper/radio station prohibition in situations which meet standards to be established in this proceeding based on the "number of remaining independent voices" (i.e., NOI, Paras. 11-12) and/or the "size of the market" (i.e., NOI, Paras. 13-18). With all due respect, Reading believes that any effort to regulate newspaper/radio station combinations based on these factors is essentially arbitrary because:

1. It is impossible to define, and therefore it is impossible to count in any specific market, the information "voices" which have -- or may have -- significant impact on viewpoint diversity.

2. It is impossible to weigh the significance of various types of "voices" in terms of influence on viewpoint diversity (e.g., the "average" television station versus the "average" radio station), yet failing to assign weights to various types information conduits undercuts the rationality of any voice-based standard.
3. It is impossible to establish a rational standard for the number of independent voices which are needed to assure sufficient viewpoint diversity in a market to warrant allowance of a newspaper/radio station combination.
4. It makes no sense to use "market rank" to assess the number of competing voices available to listeners because information sources, even regarding "local" issues, are no longer market-based.

Accordingly, Reading believes that the Commission should modify Section 73.3555(d) to allow newspaper/radio station combinations without regard to the "number of remaining independent voices" or "market rank."

Reading is particularly concerned about the situation in which it finds itself; namely, as the publisher of a daily newspaper, it desires to be able to operate a single AM and a single FM station in the same market. Regardless of the rules the Commission may adopt to cover other situations, Reading believes the Commission should continue its long-standing policy of treating AM/FM combinations as a single entity, and should allow newspaper publishers to own such radio combinations without multiple ownership rule restrictions or qualifications of any kind.

BEFORE THE  
**Federal Communications Commission**

In the Matter of	)	
	)	MM Docket No. 96-197
Newspaper/Radio Cross-Ownership	)	
Waiver Policy	)	
	)	

To: The Commission

**COMMENTS**

Reading Eagle Company ("Reading"), the majority stockholder in WEEU Broadcasting Company ("WEEU"), licensee of standard broadcast Station WEEU, Reading, Pennsylvania, hereby submits these Comments in response to the FCC's Notice of Inquiry (released October 1, 1996) ("NOI") in the above-captioned proceeding.

**I. Background**

Reading Eagle Company publishes the Reading Eagle (M-F evenings) and the Reading Times (M-F mornings) in Reading, Pennsylvania.<sup>1/</sup> For many years, Reading has been interested in the

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<sup>1/</sup> Reading also publishes the combined Reading Eagle and Reading  
(continued...)

acquisition of an accompanying FM station in the Reading market, but has not been able to do so because of the Commission's newspaper/radio station prohibition (Section 73.3555(d) of the Rules).<sup>2/</sup> Reading has always found it both inexplicable and unfair for the Commission to prohibit a local newspaper/radio (or TV) station combination, while allowing the major television networks to own newspapers in communities where they are able to exert considerable influence on public opinion through their local affiliates.<sup>3/</sup> Worse yet, over the past 22 years Reading has watched in silent frustration as its radio competitors, who were allowed to operate AM/FM combinations under the rules in effect in 1975 (and prior thereto), have been the beneficiaries of the relaxation of the Commission's rules regarding the ownership of multiple radio

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<sup>1/</sup> (...continued)  
Times Saturday morning, and the Sunday Reading Eagle on Sunday.

<sup>2/</sup> See, Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order, 50 FCC 2d 1046 (1975) ("Second Report and Order"), recon., 53 FCC 2d 589 (1975), aff'd sub nom. Federal Communications Commission v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978).

<sup>3/</sup> Not only do the networks influence local opinion on a daily basis through their regular newscasts and discussion programming, but also at critical points in the political process by, for example, reporting on exit polls.

broadcast stations on a local basis. Thus, while the licensees of other radio stations in Reading and other markets have engaged in acquisitions which have produced unprecedented radio station combinations, under rules which now allow others to own and operate as many as eight radio stations (including five FM stations) in the largest markets, Reading can not acquire even a single FM station in the Reading area. In addition, there are no limits at all on the number of local outlets available to syndicators of live, interactive programming.

After all these years of waiting, Reading is pleased that the Commission has issued the NOI and trusts that the outcome of this proceeding will provide it with relief from the situation which has existed since 1975.<sup>4/</sup> This Commission has been a leader in encouraging entities in the telecommunications industry to develop new technologies and approaches and for this it is to be commended. The Commission also is to be commended for revisiting the current

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<sup>4/</sup> The joint-ownership of Station WEEU and the Reading Eagle and Reading Times was grandfathered by the Commission in 1975 when the newspaper/radio station cross-ownership prohibition became effective. See, Second Report and Order, 50 FCC 2d at 1080, and 1098 ("Appendix E.")



local newspaper/radio station prohibition in light of the "communications revolution" which it has played such an important role in creating.

## II. Reading's Comments

### A. Introduction

There is no need to belabor the obvious: there are many, many more media outlets (broadcast and non-broadcast) in existence now than were in existence in 1975 when the Commission's newspaper/radio station cross-ownership prohibition came into existence. The increase in radio stations since 1975 mentioned in Paragraph 9 of the NOI is merely the tip of the proverbial iceberg. The number of television stations has increased dramatically, an inter-connected satellite cable television service is now a dominant factor as a universal communications medium, and new technologies such as multi-channel multi-point distribution service (MMDS), satellite-delivered audio and video services, public radio repeaters, cable delivery of local radio stations, local access cable, etc., are fixtures in many markets. The possibility that joint newspaper and radio station ownership in a market will have a significant adverse impact on either viewpoint diversity or

economic competition is plainly far less now than in 1975.<sup>5/</sup> Whatever justification there might have been in 1975 for a rule prohibiting the creation of local newspaper/radio station combinations, the increased number of media and other communications outlets, and the significance of those new outlets in influencing public opinion, makes the absolute prohibition of any new newspaper/radio station combinations arbitrary and contrary to the public interest. Accordingly, Reading strongly supports the basic thrust of the NOI -- namely, the lessening of restrictions on joint newspaper/radio station ownership in the same market.

However, Reading disagrees fundamentally with the approach proposed by the Commission in the NOI -- i.e. that waiver of the newspaper/radio station prohibition should be granted based on standards defined in terms of the number of remaining independent "voices" in the market and/or the size of the relevant "market." Reading's position is that the Commission should revise its rules

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<sup>5/</sup> Although the NOI and these Comments are addressed to the cross-ownership of a daily newspaper and a radio station, there is no reason in principle which would make the views expressed herein less relevant to the issue of newspaper/television station cross-ownership.

to allow the publisher of a daily newspaper to acquire one AM station and/or one FM station without regard to either the number of other "voices" in the market or the size of the "market" in which the newspaper is published.<sup>6/</sup>

With all due respect, Reading believes the approach advanced by the Commission in the NOI is fundamentally misguided for these reasons:

1. It is impossible to define, and therefore it is impossible to count in any specific market, the information "voices" which have -- or may have -- significant impact on viewpoint diversity.
2. It is impossible to weigh the significance of various types of "voices" in terms of influence on viewpoint diversity (e.g., the "average" television station versus the "average" radio station)<sup>7/</sup>, yet failing to assign weights to various types information conduits undercuts the rationality of any voice-based standard.

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<sup>6/</sup> Reading takes no position on whether the owner of a daily newspaper which desires to acquire more than a single AM and a single FM station in the same market should be required to seek "waiver" of the Commission's rules. However, for the reasons expressed herein, Reading does not believe that such decisions should be based on the rank of the relevant market and/or the number of remaining voices.

<sup>7/</sup> Even more difficult is the problem of weighing of various outlets of the same kind (e.g., comparing a 50 kilowatt clear channel AM station versus a 250 watt daytime AM station.)

3. It is impossible to establish a rational standard for the number of independent voices which are needed to assure sufficient viewpoint diversity in a market to warrant allowance of a newspaper/radio station combination.
4. It makes no sense to use market "rank" to assess the number of competing voices available to listeners because information sources, even regarding "local" issues, are no longer market-based.

Accordingly, Reading calls upon the Commission to abandon completely the "top market/remaining voices" schema which is the framework for the request for comments in the NOI.

**B. The Commission's Proposed "Top Market/Remaining Voices" Paradigm Is Outmoded and Should be Rejected Entirely.**

1. It Is Impossible to Define or Count Information "Voices" in the Current Information Marketplace.

Reading does not agree with the fundamental, though unstated premise, of the "Discussion" part of the NOI. The Commission's attempt to define, by type and in geographic terms, the kinds of "voices" which provide viewpoint diversity to a community (and therefore, only if present in "sufficient" quantity, justify government approval for the creation of a newspaper/radio station combination) is a hopeless and meaningless endeavor. Any result

which the Commission might reach in such an endeavor will, in Reading's view, be arbitrary and capricious.

The Commission's discussion of the issues upon which it seeks comment in the NOI is basically a plea for assistance in developing guidelines to define the undefinable. The fact is that there are an uncountable number of information "voices" now available in all markets, and the Commission has no principled way of determining which of these "voices" are or are not "significant" in terms of influencing public opinion; hence, the Commission can not rationally base any standard for allowing newspaper/radio combinations on such considerations.<sup>8/</sup>

Let us get to specifics. Exactly what voices should "count" for purposes of "viewpoint diversity" and on what basis should distinctions between voices that "count" and those that do not

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<sup>8/</sup> Reading focuses these Comments on communications media as information "voices." However, even this limitation is far from self-evident, as non-communications entities often have considerable capability to influence public opinion on important local issues. A large department store or a major manufacturer can shape public opinion by the use of, and influence over, local media, and through the voices of its employees in local elections and ballot issues, etc.

"count" be made? It seems to Reading that it would be arbitrary and capricious if the Commission were to conclude that although radio stations count for this purpose, television stations do not count. NOI, Para. 11. Further, Reading can not conceive of a rationale why commercial radio and television stations should be counted but non-commercial stations should not be counted. NOI, Para. 12. Similarly, Reading can not imagine how, if the issue is local newspaper/radio station cross-ownership, the Commission could possibly ignore the existence of another daily newspaper in the same community. Id. For that matter, Reading has difficulty understanding why once or twice-a-week newspapers should not be counted or why other local newspapers, which contain editorial content, even if they are designed to reach special audiences, should not be counted. Indeed, Reading does not understand why the kind of paper a publisher uses is the least bit relevant, and so it can not understand why, if newspapers are counted, magazines should be excluded from the count. Of course, Reading also does not see how the existence of a local cable system can possibly be ignored. Id. But if cable systems are counted, Reading does not perceive how the Commission can conceivably refuse to recognize the existence of MMDS services, satellite-delivered audio and video

programming services, or even services which provide subscribers with news, weather, sports, and business information on pagers via satellite or FM subcarriers.

But where does this stop? What about the mind-numbing variety of "informational services," on every imaginable subject, now available in most US homes through the Internet and NetTV? And what about the virtually unlimited number of information sources now available via CD ROM and video disks? The truth is that the Genie is out of the bottle. In the telecommunications world on the verge of the 21st Century, a staggering amount of information and tremendous viewpoint diversity is available to everyone in all markets. Any attempt by the Commission to draw lines and "count" what does and does not constitute a "significant" competing voice is a hopeless, meaningless endeavor. The truth is that there is no satisfactory answer to the question of where to draw the line, and that the entire effort to describe and quantify the number of voices in a market necessary to justify a newspaper/radio joint ownership is an exercise driven by the desire to have a fixed answer to a question which simply does not have a fixed answer. Since there is no way for the Commission to formulate any non-

arbitrary definition of the kinds of "voices" that are relevant to "viewpoint diversity," the Commission should not attempt to do so.

2. It Is Impossible to Weigh the Influence of Different Kinds of Information "Voices".

Further, any effort to define the relevant universe of "significant" voices will ultimately prove futile because while it is impossible to deny that some "voices" have incomparably greater influence than other voices, there is no way for the Commission to know or quantify the relative significance of such voices. For example, while there is little doubt that many television stations have considerably more impact on public opinion than many radio stations, it is also true that there are situations where a radio station has more influence than a local television station (although Reading is hard-pressed to know exactly how these distinctions and differences might be measured.) The Commission appears to acknowledge as much in Paragraph 11 of the NOI, wherein it invites comments on weighting various media entities according to some formula (e.g., television stations might be weighted three times as much as radio stations) in determining the number of voices in a market.



But the Commission can not possibly decide in any rational way what the appropriate weighting relationships should be (for example, as between television stations and radio stations.) It is obvious that the influence of stations of the same type vary widely, and that no formula can be devised to express the relationship of the relative influence of "television stations" as a class to "radio stations" as a class. The same difficulty in determining relative weights of media types is also obviously applicable to other means of mass communications, e.g., newspapers, cable systems, DBS networks, etc., as well as to other media, both well-established and otherwise. There is also the question of the weight to be attributed to non-mass media communications entities. For example, although the Internet's influence is undeniable, its influence can not be quantified or fairly compared to the influence of other media. The hard truth is that the influence of any subgroup of the communications industry is not subject to quantification, and an effort by the Commission to do so will simply be an exercise in arbitrary decision-making.

3. It Is Impossible To Determine Rationally How Many Voices Are Needed to Provide "Adequate" Viewpoint Diversity.

As if the foregoing were not enough, Reading does not believe the Commission has any legitimate basis for determining how many

independent market "voices" (however that term may be defined) there should be in order to justify a joint newspaper/radio station combination. Whether the Commission sets the minimum number of voices at 20 or 30 or 50, the number will be completely arbitrary. There is no principled way for the Commission to determine what the minimum number of "voices" should be, and it should not attempt to do the impossible.

4. It Should Not Be Assumed That "Market Rank" Correlates With the Number of Information Voices Available to Area Residents.

The Commission asks for comment regarding various issues relating to the use of "market rank" in making decisions about allowance of newspaper/radio combinations. See NOI, Paras. 13-17. At one point the Commission asks whether it should "consider market rank at all or, instead, simply rely on the number of independent voices that would remain after the waiver." NOI, Para. 13. For the reasons explained previously, Reading believes that the Commission should not base its decisions on the "remaining voices" criterion; similarly, but for different reasons, Reading believes that the Commission should not base its decisions on the "market rank" criterion.

There are two major problems with the use of market rankings as a major criteria in considering proposed newspaper/radio station combinations. The first problem is that as we emerge into the 21st Century, the concept of local market, however the term is defined, is becoming increasingly irrelevant for purposes of assessing viewpoint diversity and economic competition. The notion that only local media provide information and viewpoint material of relevance to even local issues (to say nothing of regional, national, or worldwide issues) is outmoded. The residents of every market, of every size, receive information and opinion from distant sources located outside any conceivable definition of "the market" on an incredible variety of matters relevant to local issues. For example, take the issue of "drug use by students." Even in the smallest market where drugs in the schools is a problem, the residents have access to countless sources of information from outside the market addressing the issue of drug use by students. The same can be said for all "local" problem of any real significance. Thus, it makes little difference whether a market is designated "number 15" or "number 150" according to a definition established by the Commission. Since those within both markets (and virtually all markets) have access to a wide variety of information from distant sources via print, cable, and over-the air

media, it makes no sense for the Commission to attempt to distinguish between markets based on an arbitrary market-rank standard.

Furthermore, the use of "market rank" as a criteria for decision-making, not only assumes that there are more sources of information in larger markets than there are in smaller markets, it inevitably assumes that the same number of information voices reach every part of a market. But this is obviously not the case and can lead to absurd results. Take, for instance, a proposal to combine a newspaper and a radio station in a smaller community ("S") in a large market (for example, market #10) with a proposal to combine a newspaper and a radio station in a larger community ("L") in a smaller market (for example, market #150). If the Commission were to make decisions based on market size, and drew the line somewhere between the #10th and the #150th markets, it would lead to the anomalous situation of allowing a newspaper/radio station combination in Community S, simply because it is located in a "large market," even though virtually none of the media voices in the large market are attentive to the issues of concern to the Community S, while it might disallow a similar combination in Community L, located in a "smaller market," even though there were

a number of other voices in the market which were attentive to "local issues" of particular concern to residents in Community L.

Accordingly, Reading believes that the Commission should not use "market rank" as a criteria for determining circumstances where newspaper/radio station combinations will be allowed.

C. In any Event, the Commission Should Provide the Most Favored Treatment Under Its Rules for the Joint Ownership of a Newspaper and a Single AM and/or Single FM Station.

Reading is in agreement with the Commission's suggestion that, regardless of any other conclusions reached in this proceeding, the most favored treatment should be accorded to an entity which proposes joint ownership of a daily newspaper and only a single AM and/or a single FM station in the same market.<sup>2/</sup> The Commission has traditionally considered AM/FM combinations with special deference and has often treated them as a unit. For example, it has never placed multiple ownership limitations on AM/FM combinations per se.

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<sup>2/</sup> See NOI, Para. 11, wherein the Commission asks for comment regarding more favorable treatment if the proposed purchaser would hold not more than a specified number of radio stations in the market after the transaction. More specifically, see NOI, Para. 10, wherein the Commission suggests that the "waiver test" might apply only where an applicant proposes to own no more than "a single station in each broadcast service in the community."

Further, the Commission allows the owner of a radio station to simulcast the station's programming on another radio station in the other (AM or FM) service, while it maintains a limit on the amount of program duplication between same service radio stations in the same market. See Section 73.3556 of the Rules. The Commission also allows the licensee of an FM station to locate its main studio at the studio of a co-owned AM station with the same community of license, even if the studio location of the AM station is not within the principal community contours of the FM station. See Section 73.1125(a)(2) of the Rules. Therefore, whatever regulations the Commission ultimately adopts to cover situations involving the cross-ownership of a daily newspaper and more than one AM and/or more than one FM station, the Commission should in any event adopt rules which consider an AM/FM station combination as a unit, and which expressly allow (without the need for any rule waiver) the same market joint ownership of a daily newspaper and a single AM station and/or a single FM station.<sup>10/</sup>

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<sup>10/</sup> Indeed, Reading believes that the FCC's multiple ownership should allow every speaker to have access to each type of media because there can be no consensus on what constitutes a "voice or medium" across various demographic groups.

Conclusion

Although Reading appreciates the Commission's evident desire to allow new newspaper/radio station combinations in certain circumstances, it does not agree that any "top market/remaining other voice" framework is a justifiable standard for decision-making. It believes the Commission should amend Section 73.3555(d) of its Rules to allow the combination of a daily newspaper and not more than a single AM station and/or a single FM station without condition or qualification.<sup>11/</sup>

Respectfully submitted

READING EAGLE COMPANY

A handwritten signature in dark ink, appearing to read "Lawrence N. Cohn", is written over a horizontal line.

Lawrence N. Cohn

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Dated: February 7, 1997

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<sup>11/</sup> Also, see footnote 5, above.